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In re Application of :
Kaye et al. : DECISION GRANTING PETITION
Application No. 10/010,613 : UNDER 37 CFR 1.55(c)
Filed: 5 December, 2001 :
Atty Docket No. 17893.006 :
:

This is a decision on the petition under 37 CFR 1.55(c), filed on 16 December, 2004, for acceptance of an unintentionally delayed claim under 35 U.S.C. § 119(a)-(d) for benefit of the filing date of foreign British Applications Nos. GB9408169.2, filed 25 April, 1994, and GB9521943.2, filed on 26 October, 1995.

A petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority requires:

- (1) The nonprovisional application claiming the benefit of an earlier filing date must be filed on or after November 29, 2000;
- (2) the claim submitted with the petition must identify the prior foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by the application number, country, and the filing date **and be included either in an oath or declaration (37 CFR 1.63(c)(2)) or in an Application Data Sheet (37 CFR 1.76(b)(6))**;
- (3) the surcharge as set forth in 37 CFR 1.17(t);
- (4) a statement that the entire delay between the date the claim was due under 37 CFR 1.55(a)(1) and the date the

- claim was filed was unintentional. (The Commissioner may require additional information where there is a question whether the delay was unintentional); and
- (5) the above-identified nonprovisional application must be filed within 12 months of the filing date of the foreign application.

The instant pending nonprovisional application was filed after November 29, 2000, and did not include a reference to the foreign applications, for which benefit is now sought, within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior foreign applications. Therefore, since the claim for priority is submitted after the period specified in 37 CFR 1.55(a)(1)(i), this is an appropriate petition under the provisions of 37 CFR 1.55(c).

The above-identified pending nonprovisional application was filed on 5 December, 2001, which is after 29 November, 2000. Additionally, the above-noted foreign applications were filed within 12 months of the prior-filed applications noted in the amendment filed on 16 December, 2004, and in the Application Data Sheet received on 26 January, 2005, which identifies the foreign applications for which priority is claimed by application number, country, and filing date. The required petition fee of \$1,370 has been received. Lastly, petitioner has provided an adequate statement of unintentional delay.

All requirements being met, the petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority under 35 U.S.C. § 119(a)-(d) is **granted**.

37 CFR § 1.55(c)(3) requires a statement that the entire delay between the date the claim was due under 37 CFR § 1.55(a)(1) and the date the claim was filed was unintentional. Since the statement contained in the instant petition varies from the language required by 37 CFR 1.55(c)(3), the statement contained in the instant petition is being construed as the statement required by 37 CFR 1.55(c)(3).

A Corrected Filing Receipt which reflects the above-noted foreign applications accompanies this decision on petition.

This application is being forwarded to Technology Center AU 2876 for examination in due course and for consideration by the examiner of record of the foreign priority claim under 35 U.S.C. § 119(a)-(d).

Telephone inquiries related to this decision should be directed to Senior Petitions Attorney Douglas I. Wood at 571-272-3231.

Frances Hicks

Frances M. Hicks
Lead Paralegal
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Encl: Corrected Filing Receipt